LEONG WEE SHING

v.

CHAI SIEW YIN

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[ORIGINATING SUMMONS NO: S2-24-814-1999]
25 NOVEMBER 1999

FAMILY LAW: *Marriage - Validity - Marriage not registered - Marriage not solemnised by Registrar - Whether marriage void for non-registration - Law Reform (Marriage & Divorce) Act 1976, s. 27 - Whether there was a valid marriage subsisting - Effect of s. 34 - Whether marriage validated by s. 34 - Whether marriage properly solemnised - Sections 5(4), 9, 22, 24 & 25*

FAMILY LAW: *Marriage - Validity - Taking wedding photographs, printing and sending wedding invitation cards, holding wedding dinner and 'tea-drinking' ceremony - Whether constitute an act of marriage - Whether marriage must be solemnised and registered by Registrar - Whether marriage void for non-registration - Whether marriage validated by s. 34 of Law Reform (Marriage & Divorce) Act 1976 - Whether must prove Chinese customary marriage for s. 34 to apply*

WORDS & PHRASES: *"marriage" - Law Reform (Marriage & Divorce) Act 1976, s. 34 - Ordinary everyday meaning - Ceremony, act or contract by which a man and a woman become husband and wife*

This was the plaintiff's application for, *inter alia*, a declaration that her marriage to the deceased was valid. The plaintiff contended that she married the deceased on 19 November 1995 according to Chinese customary rites and that thereafter she lived with the deceased in Kuala Lumpur. Conversely, the defendant (mother of deceased) submitted that no marriage between the plaintiff and the deceased had ever been registered at the Registry of Marriages and, consequently, even if there was a marriage or a Chinese customary marriage, it was void for non-registration.

Held:

[1] In relying utterly on s. 27 of the Law Reform (Marriage & Divorce) Act 1976 ('the Act') the defendant had overlooked s. 34 of the Act. If there was a valid marriage subsisting between the plaintiff and the deceased s. 34 of the Act would validate it.

[2] The plaintiff and the deceased had taken wedding photographs, printed and sent out wedding invitation cards, invited guests for a wedding dinner, and had gone through a 'tea-drinking' ceremony. These were sufficient grounds for a finding that there was a valid marriage subsisting between the plaintiff and the deceased. Hence, s. 34 of the Act would validate their marriage.

[3] Pursuant to s. 34 of the Act, the plaintiff did not **even** have to show that there was a marriage according to Chinese customary rites so long as there was a marriage. Section 34 of the Act refers to the existence of "any" marriage and does not define the term "marriage". Thus, the term "marriage" therein should be given its ordinary everyday meaning. The fact that the plaintiff and the deceased had sent wedding invitation cards to their relatives and friends inviting them to witness the wedding and also to attend a 'tea-drinking' ceremony as well as a wedding dinner showed that an act of marriage had taken place on 19 November 1995.

[4] The marriage had also been properly solemnised pursuant to s. 22(1)(c) of the Act. The fact that the marriage was not solemnised and registered **by** a Registrar was of no consequence; it was validated by s. 34 of the Act.

[Application allowed; marriage declared valid.]

Case(s) referred to:
Re Estate of Chong Swee Lin; Kam Soh Keh v. Chan Kok Leong & Ors [1996] 1 CLJ 485 ***(refd)***

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, ss. 5(4), 9, 22(1)(c), 24(1), 25, 27, 34

Other source(s) referred to:
Chambers Dictionary, 20th edn

For the plaintiff - Hazman Ahmad; M/s Hazman & Assoc
For the defendant - Alex Lee; M/s Ghee Meng & Co

Reported by Frederic Gan

JUDGMENT

RK Nathan J:

Application

This is an application by the plaintiff for the following orders:

(1) that her marriage to one Lau Yen Yoon (deceased) performed pursuant to Chinese customary rites be declared valid;

(2) that she has a legal right to claim her share of the properties registered in both the names of the plaintiff and the deceased;

(3) that she has a legal right to make a claim over all properties registered in the name of the deceased;

(4) that she has a legal right to claim all properties jointly acquired during the life time of the deceased;

(5) that she has a legal right to claim all jewellery given to her as gifts during the wedding which are in the safe deposit box kept by the deceased in the bank; and

(6) such other relief as the court thinks fit and proper.

The Affidavits

In support of her application the plaintiff affirmed an affidavit (encl 2). She confirmed that she had married one Lau Yen Yoon (the deceased) according to Chinese customary rites on 19 November 1995. She was given gifts of jewellery during the wedding on 20 November 1995 which took place at Cha'ah, Johor Darul Takzim. After the wedding she lived with the deceased at No. 7, Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala Lumpur. She exhibited to her affidavit her wedding invitation card, wedding photographs of herself and the said deceased, and photographs taken at the wedding dinner. Amongst the many photographs exhibited was one taken of the defendant, the mother of the deceased, and another of her, mingling with the guests at the dinner. The plaintiff also exhibited her Statutory Declaration affirming her marriage to the deceased. In her affidavit she confirmed that there has been no proceedings so far to show that their relationship of husband and wife had ceased. She believed that their marriage was according to law. She and the deceased continued with their business which was carried on at No. 7, Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala Lumpur.

On 7 March 1999 at about 8.30am the deceased met with a motor accident and died the same day at the scene of the accident. The plaintiff exhibited the deceased's death certificate which incidentally showed the deceased's address as the same address given by the plaintiff. The deceased was buried in Johor. When she returned to her place of business on 26 April 1999 she found the same ransacked. She complained that she has been prevented by the defendant from entering the place of business. As the lawful wife of the deceased she claimed entitlement to all or a part of the assets, registered in the names of the deceased and herself or registered only in the name of the deceased. The assets she claimed entitlement to, included the business and the premises known as No. 7, Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala

Lumpur. She also claimed entitlement to all assets registered in the name of the deceased and presently in the possession of the deceased's relatives. This included the log book No. 4960451 for motorcycle WFM 986, motor insurance cover note in respect of the said motorcycle and she further listed numerous items in the affidavit.

In her reply, the defendant, who is the mother-in-law of the plaintiff, denied that the wedding dinner referred to by the plaintiff was to validate the marriage between the plaintiff and her son. She contended that even if there was such a dinner, the very fact that the marriage was not registered at the Registry of Marriages, showed that there could be no valid marriage between the plaintiff and her deceased son. She exhibited a computer search from the Registry of Marriages Malaysia to show that no such marriage between the plaintiff and her deceased son had been found to have been registered at the Registry of Marriages Malaysia. As a result thereof she maintained that even if there was such a marriage, it was void and ought not to be recognised as a valid marriage according to law. She further argued that even if there was such a Chinese customary marriage as contended by the plaintiff such a marriage was also void for non-registration. She denied the plaintiff's allegation that after the wedding dinner, her deceased son left with the plaintiff for Kuala Lumpur. She contended that he remained in Cha'ah, Johor, where he helped the defendant to run a school canteen whilst the plaintiff returned to her business in Kuala Lumpur. The defendant stated in her affidavit that in respect of her son's death she had applied for and had been granted the Letters of Administration on 16 July 1999. Although she had exhibited the petition she did not exhibit the grant. She argued that since there was no will she was the rightful beneficiary of the deceased. She contended that the plaintiff had made no contribution especially in the form of monetary contribution to the business and hence ought not to be entitled to any claim upon the said business.

In her reply the plaintiff averred that their marriage had the blessings of the deceased's family. She maintained that the wedding dinner was an affirmation of their marriage and that it was attended to by relatives of both families. Although her marriage to the deceased was not registered she maintained it was a valid marriage pursuant to customary law.

Findings Of The Court

It is the case of the defendant that since there has been no registration of the marriage between the plaintiff and the deceased, the said marriage is void and ought not to be recognised. Mr. Lee for the defendant relied fully on s. 27 of the Law Reform Marriage and Divorce Act 1976 (the Act). The said section reads as follows:

27. Registration.

The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

It is not in dispute that the appointed date referred to in the said search is 1 March 1982. To my mind the defendant's submission ignores the provision of s. 34 of the Act. The said section reads as follows:

34. Legal effect of registration.

Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

The object of the Act was to regulate or regularise aspects of marriage and divorce of non Muslims in the country. This was the spirit and intent of the Act. Surely therefore it cannot be the intention of Parliament that all marriages that had occurred before 1 March 1982 and not registered, ought to be held void and not recognised as valid. The serious consequences of such an interpretation would be mind boggling. For example, such an interpretation would have the effect of bastardising issues, and causing disarray upon inheritance. It is to avert such a catastrophe that s. 34 was introduced. This has the effect of validating such marriages that were not registered before 1 March 1982. Therefore now all marriages are valid. The only issue that the defendant can possibly raise is, was there a valid marriage in this case. If there is a valid marriage then clearly s. 34 of the Act would validate this marriage.

In *Re Estate of Chong Swee Lin; Kam Soh Keh v. Chan Kok Leong & Ors* [1996] 1 CLJ 485; [1997] 4 MLJ 464, the petitioner, claiming to be the lawful husband of the deceased filed a petition for letters of administration to the deceased's estate. The petition was contested by the respondents who were the lawful children of the deceased. The respondents claimed that the petitioner was never the lawful husband of the deceased. In that case the defendants relied on expert evidence on what constitutes a Chinese customary marriage. His Lordship James Foong J held that this proof that there was a Chinese customary marriage, was essential since the petitioner claimed that his marriage to the deceased had taken place before the coming into force of the Act which by s. 4 recognises subsisting valid marriages solemnised under any law, religion, custom or usage before the Act became effective. Based on the expert evidence with regard to the "tea-drinking ceremony" which the expert said formed an integral part of a Chinese customary marriage, and since there was clear evidence of the absence of such a ceremony His Lordship held that the said marriage could not have been properly constituted and hence he dismissed the said petition.

In the case before me there was no issue raised by the defendant in respect of the "tea-drinking ceremony". Therefore I must take it that such a ceremony had indeed taken place. I am satisfied that considering the fact that the deceased and the plaintiff had taken wedding photographs, had printed and sent out wedding invitation cards, had invited guests for the wedding dinner wherein the defendant herself was present, there are sufficient grounds to find that there was a valid marriage subsisting between the plaintiff and the deceased. Whilst I agree that s. 4 of the Act refers to customary marriages solemnised prior to 1 March 1982, s. 34 is the proper section to validate this marriage.

I am of the view that pursuant to s. 34 of the Act the plaintiff does not even have to show that there was a marriage valid according to Chinese customary rites so long as there was a marriage. It is pertinent to note that s. 34 refers to the existence of "any marriage" and it is also relevant to note that the word "marriage" is not defined in the definition section. It is therefore necessary to look at its every day meaning attributed to "marriage" as understood by the man in the street. *Chambers Dictionary* 20th edn defines "marriage" as "the ceremony, act or contract by which a man and a woman become husband and wife". It is my judgment therefore that the very act of printing and sending a wedding invitation inviting friends and relatives to witness the wedding between the plaintiff and the deceased and also the "tea-drinking ceremony" and the further request to attend the wedding dinner that same night (all stated in the wedding invitation card) clearly reflect the act of marriage having taken place on 19 November 1995. It is my judgment therefore that the requirement of s. 34, that a marriage had indeed taken place, has been satisfied.

There is another section that I must consider, that is, s. 5(4) of the Act which reads as follows:

> 5. Disability to contract marriages otherwise than under this Act.
>
> ...
>
> (4) After the appointed date, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III.

Section 9 of Part III reads:

> 9. Persons by whom marriages may be solemnised.
>
> A marriage under this Act may be solemnised only by a Registrar.

Sections 22 and 24(1) of the Act provide for the solemnisation of the marriage and consequently s. 25 provides that immediately after the solemnisation, the registrar shall enter the prescribed particulars in the marriage register. In the present case the relevant section would be s. 22(1)(c) which reads as follows:

22. Solemnisation of marriages.

(1) Every marriage under this Act shall be solemnised -

...

(c) in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

Therefore pursuant to the wedding invitation card a wedding ceremony "permitted by the custom or usage" which both the plaintiff and the deceased practised, together with the "tea-drinking ceremony" had been performed at a place as stated in the invitation card. The marriage therefore has been properly solemnised. Granted it has not been registered, but that is of no consequence. Section 34 of the Act takes care of that and validates the marriage.

However, having considered all issues I was only prepared to grant an order in terms of the 1st prayer, namely, for an order that the plaintiff's marriage to one Lau Yen Yoon (deceased), performed pursuant to Chinese customary rites be declared valid. I declined to make an order in terms of the other prayers asked for because with my finding declaring her marriage as valid the legal consequences of such finding must follow.